

AMENDED IN SENATE APRIL 11, 2007

SENATE BILL

No. 1012

Introduced by Senator Dutton

February 23, 2007

An act ~~relating to energy~~ to amend Sections 25301, 25302, 25334, and 25534 of the Public Resources Code, to amend Sections 216, 330, 331, 359, 361, 365, 367, 373, and 376 of, to add Sections 345.6 and 345.7 to, to repeal Sections 367.7 and 390 of, and to repeal Article 2 (commencing with Section 334) and Article 4 (commencing with Section 355) of Chapter 2.3 of Part 1 of Division 1 of, and to repeal Division 1.5 (commencing with Section 3300) of, the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1012, as amended, Dutton. ~~Energy: renewables portfolio standard.~~ Electrical restructuring: oversight board: power exchange: power authority.

(1) The existing restructuring of the electrical services industry provides for the authorization of direct transactions between electricity suppliers and end use customers and for the creation of the Independent System Operator and the Power Exchange, an incorporated public benefit nonprofit corporation. An Electricity Oversight Board is also created to, among other things, oversee the Independent System Operator and the Power Exchange, and to determine the composition and terms of service and to appoint the members of the governing boards of the Independent System Operator and the Power Exchange.

This bill would delete the Electricity Oversight Board and the Power Exchange. The bill would repeal provisions pertaining to the prescribed functions of the Electricity Oversight Board and the Power Exchange.

The bill would make conforming changes to existing law by deleting references to the Electricity Oversight Board and the Power Exchange.

(2) The California Consumer Power and Conservation Financing Authority Act establishes the authority with certain powers and responsibilities for the purposes of augmenting electric generating facilities and ensuring a sufficient and reliable supply of electricity. The act establishes a California Consumer Power and Conservation Financing Authority Fund in the State Treasury.

This bill would repeal that act. The bill would delete the authority and repeal provisions pertaining to the prescribed functions of the authority.

(3) Existing law requires the Independent System Operator governing board to be appointed by the Governor and to be confirmed by the Senate. Existing law requires these appointments to be for 3-year terms, with initial appointments of one member for a one-year term, 2 members for a 2-year term, and 2 members for a 3-year term. Existing law imposes prescribed requirements regarding the bylaws of the Independent System Operator.

This bill would make technical and conforming changes to existing law.

~~Existing law establishes the California Renewables Portfolio Standard Program, which requires a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, to purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year.~~

~~The Warren-Alquist State Energy Resources Conservation and Development Act establishes the Renewable Energy Resources Program to increase the amount of electricity generated from eligible renewable energy resources.~~

~~This bill would state the intent of the Legislature to ensure that the state meets the targets established by the renewables portfolio standard program by enacting legislation creating a multiagency body under the direction of the Governor to identify and resolve permitting issues associated with renewable energy generation and transmission line facilities.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 25301 of the Public Resources Code is*
2 *amended to read:*

3 25301. (a) At least every two years, the commission shall
4 conduct assessments and forecasts of all aspects of energy industry
5 supply, production, transportation, delivery and distribution,
6 demand, and prices. The commission shall use these assessments
7 and forecasts to develop energy policies that conserve resources,
8 protect the environment, ensure energy reliability, enhance the
9 state's economy, and protect public health and safety. To perform
10 these assessments and forecasts, the commission may require
11 submission of demand forecasts, resource plans, market
12 assessments, and related outlooks from electric and natural gas
13 utilities, transportation fuel and technology suppliers, and other
14 market participants. These assessments and forecasts shall be done
15 in consultation with the appropriate state and federal agencies
16 including, but not limited to, the Public Utilities Commission, the
17 Office of Ratepayer Advocates, the Air Resources Board, ~~the~~
18 ~~Electricity Oversight Board~~, the Independent System Operator,
19 the Department of Water Resources, the California Consumer
20 Power and Conservation Financing Authority, the Department of
21 Transportation, and the Department of Motor Vehicles.

22 (b) In developing the assessments and forecasts prepared
23 pursuant to subdivision (a), the commission shall do all of the
24 following:

25 (1) Provide information about the performance of energy
26 industries.

27 (2) Develop and maintain the analytical capability sufficient to
28 answer inquiries about energy issues from government, market
29 participants, and the public.

30 (3) Analyze and develop energy policies.

31 (4) Provide an analytical foundation for regulatory and policy
32 decisionmaking.

33 (5) Facilitate efficient and reliable energy markets.

34 *SEC. 2. Section 25302 of the Public Resources Code is*
35 *amended to read:*

36 25302. (a) Beginning November 1, 2003, and every two years
37 thereafter, the commission shall adopt an integrated energy policy
38 report. This integrated report shall contain an overview of major

1 energy trends and issues facing the state, including, but not limited
2 to, supply, demand, pricing, reliability, efficiency, and impacts on
3 public health and safety, the economy, resources, and the
4 environment. Energy markets and systems shall be grouped and
5 assessed in three subsidiary volumes:

6 (1) Electricity and natural gas markets.

7 (2) Transportation fuels, technologies, and infrastructure.

8 (3) Public interest energy strategies.

9 (b) The commission shall compile the integrated energy policy
10 report prepared pursuant to subdivision (a) by consolidating the
11 analyses and findings of the subsidiary volumes in paragraphs (1),
12 (2), and (3) of subdivision (a). The integrated energy policy report
13 shall present policy recommendations based on an indepth and
14 integrated analysis of the most current and pressing energy issues
15 facing the state. The analyses supporting this integrated energy
16 policy report shall explicitly address interfuel and intermarket
17 effects to provide a more informed evaluation of potential tradeoffs
18 when developing energy policy across different markets and
19 systems.

20 (c) The integrated energy policy report shall include an
21 assessment and forecast of system reliability and the need for
22 resource additions, efficiency, and conservation that considers all
23 aspects of energy industries and markets that are essential for the
24 state economy, general welfare, public health and safety, energy
25 diversity, and protection of the environment. This assessment shall
26 be based on determinations made pursuant to this chapter.

27 (d) Beginning November 1, 2004, and every two years thereafter,
28 the commission shall prepare an energy policy review to update
29 analyses from the integrated energy policy report prepared pursuant
30 to subdivisions (a), (b), and (c), or to raise energy issues that have
31 emerged since the release of the integrated energy policy report.
32 The commission may also periodically prepare and release
33 technical analyses and assessments of energy issues and concerns
34 to provide timely and relevant information for the Governor, the
35 Legislature, market participants, and the public.

36 (e) In preparation of the report, the commission shall consult
37 with the following entities: the Public Utilities Commission, the
38 Office of Ratepayer Advocates, the State Air Resources Board,
39 ~~the Electricity Oversight Board,~~ the Independent System Operator,
40 the Department of Water Resources, the California Consumer

Power and Conservation Financing Authority, the Department of Transportation, and the Department of Motor Vehicles, and any federal, state, and local agencies it deems necessary in preparation of the integrated energy policy report. To assure collaborative development of state energy policies, these agencies shall make a good faith effort to provide data, assessment, and proposed recommendations for review by the commission.

(f) The commission shall provide the report to the Public Utilities Commission, the Office of Ratepayer Advocates, the State Air Resources Board, ~~the Electricity Oversight Board,~~ the Independent System Operator, the Department of Water Resources, the California Consumer Power and Conservation Financing Authority, and the Department of Transportation. For the purpose of ensuring consistency in the underlying information that forms the foundation of energy policies and decisions affecting the state, those entities shall carry out their energy-related duties and responsibilities based upon the information and analyses contained in the report. If an entity listed in this subdivision objects to information contained in the report, and has a reasonable basis for that objection, the entity shall not be required to consider that information in carrying out its energy-related duties.

(g) The commission shall make the report accessible to state, local, and federal entities and to the general public.

SEC. 3. Section 25334 of the Public Resources Code is amended to read:

25334. (a) Upon receipt of an application or upon its own motion for designation of a transmission corridor zone, the commission shall arrange for the publication of a summary of the application in a newspaper of general circulation in each county where the proposed transmission corridor zone would be located, and shall notify all property owners within, or adjacent to, the transmission corridor zone. The commission shall transmit a copy of the application for designation to all cities, counties, and state and federal agencies having an interest in the proposed transmission corridor zone. The commission shall publish the application for designation on its Internet Web site, and notify members of the public that the application is available on the commission's Internet Web site.

(b) As soon as practicable after the receipt of an application or upon its own motion for designation of a transmission corridor

1 zone, the commission shall notify cities, counties, state and federal
2 agencies, and California Native American tribes in whose
3 jurisdictions the proposed transmission corridor zone would be
4 located regarding the proposed transmission corridor zone and the
5 objectives of the most recent strategic plan for the state's electric
6 transmission grid. The commission's notice shall solicit information
7 from, and the commission shall confer with, all interested cities,
8 counties, state and federal agencies, and California Native
9 American tribes regarding their land use plans, existing land uses,
10 and other factors in which they have expertise or interest with
11 respect to the proposed transmission corridor zone. The
12 commission shall provide any interested city, county, state or
13 federal agency, California Native American tribe, or member of
14 the public, including any property owner within the proposed
15 transmission corridor zone, ample opportunity to participate in the
16 commission's review of a proposed transmission corridor zone.

17 (c) The commission shall request affected cities, counties, state
18 and federal agencies, ~~the Electricity Oversight Board, the~~
19 Independent System Operator, interested California Native
20 American tribes, and members of the public, including any property
21 owner within the proposed transmission corridor zone, to provide
22 comments on the suitability of the proposed transmission corridor
23 zone with respect to environmental, public health and safety, land
24 use, economic, and transmission-system impacts or other factors
25 on which they may have expertise.

26 (d) The commission shall require a person who files an
27 application for the designation of a transmission corridor zone to
28 pay a fee sufficient to reimburse the commission for all costs
29 associated with reviewing the application. If the commission
30 initiates the designation of a transmission corridor zone on its own
31 motion, the commission shall fix the surcharge imposed pursuant
32 to subdivision (b) of Section 40016 of the Revenue and Taxation
33 Code, at a level sufficient to cover the commission's added costs.

34 (e) Upon receiving the commission's request for review of a
35 proposed transmission corridor zone, a city or county may request
36 a fee pursuant to Section 25538 to cover for the actual and added
37 costs of this review and the commission shall pay this amount to
38 the city or county.

39 *SEC. 4. Section 25534 of the Public Resources Code is*
40 *amended to read:*

1 25534. (a) The commission may, after one or more hearings,
2 amend the conditions of, or revoke the certification for, any facility
3 for any of the following reasons:

4 (1) Any material false statement set forth in the application,
5 presented in proceedings of the commission, or included in
6 supplemental documentation provided by the applicant.

7 (2) Any significant failure to comply with the terms or
8 conditions of approval of the application, as specified by the
9 commission in its written decision.

10 (3) A violation of this division or any regulation or order issued
11 by the commission under this division.

12 (4) The owner of a project does not start construction of the
13 project within 12 months after the date all permits necessary for
14 the project become final and all administrative and judicial appeals
15 have been resolved ~~provided the California Consumer Power and~~
16 ~~Conservation Financing Authority notifies the commission that it~~
17 ~~is willing and able to construct the project pursuant to subdivision~~
18 ~~(g).~~ The project owner may extend the 12-month period by 24
19 additional months pursuant to subdivision (f). This paragraph
20 applies only to projects with a project permit application deemed
21 complete by the commission after January 1, 2003.

22 (b) The commission may also administratively impose a civil
23 penalty for a violation of paragraph (1) or (2) of subdivision (a).
24 Any civil penalty shall be imposed in accordance with Section
25 25534.1 and may not exceed seventy-five thousand dollars
26 (\$75,000) per violation, except that the civil penalty may be
27 increased by an amount not to exceed one thousand five hundred
28 dollars (\$1,500) per day for each day in which the violation occurs
29 or persists, but the total of the per day penalties may not exceed
30 fifty thousand dollars (\$50,000).

31 (c) A project owner shall commence construction of a project
32 subject to the start-of-construction deadline provided by paragraph
33 (4) of subdivision (a) within 12 months after the project has been
34 certified by the commission and after all accompanying project
35 permits are final and administrative and judicial appeals have been
36 completed. The project owner shall submit construction and
37 commercial operation milestones to the commission within 30
38 days after project certification. Construction milestones shall
39 require the start of construction within the 12-month period
40 established by this subdivision. The commission shall approve

1 milestones within 60 days after project certification. If the 30-day
2 deadline to submit construction milestones to the commission is
3 not met, the commission shall establish milestones for the project.

4 (d) The failure of the owner of a project subject to the
5 start-of-construction deadline provided by paragraph (4) of
6 subdivision (a) to meet construction or commercial operation
7 milestones, without a finding by the commission of good cause,
8 shall be cause for revocation of certification or the imposition of
9 other penalties by the commission.

10 (e) A finding by the commission that there is good cause for
11 failure to meet the start-of-construction deadline required by
12 paragraph (4) of subdivision (a) or any subsequent milestones of
13 subdivision (c) shall be made if the commission determines that
14 any of the following criteria are met:

15 (1) The change in any deadline or milestone does not change
16 the established deadline or milestone for the start of commercial
17 operation.

18 (2) The deadline or milestone is changed due to circumstances
19 beyond the project owner's control, including, but not limited to,
20 administrative and legal appeals.

21 (3) The deadline or milestone will be missed but the project
22 owner demonstrates a good faith effort to meet the project deadline
23 or milestone.

24 (4) The deadline or milestone will be missed due to unforeseen
25 natural disasters or acts of God that prevent timely completion of
26 the project deadline or milestone.

27 (5) The deadline or milestone will be missed for any other reason
28 determined reasonable by the commission.

29 (f) The commission shall extend the start-of-construction
30 deadline required by paragraph (4) of subdivision (a) by an
31 additional 24 months, if the owner reimburses the commission's
32 actual cost of licensing the project, less the amount paid pursuant
33 to subdivision (a) of Section 25806. For the purposes of this
34 section, the commission's actual cost of licensing the project shall
35 be based on a certified audit report filed by the commission staff
36 within 180 days of the commission's certification of the project.
37 The certified audit shall be filed and served on all parties to the
38 proceeding, is subject to public review and comment, and is subject
39 to at least one public hearing if requested by the project owner.

1 Any reimbursement received by the commission pursuant to this
2 subdivision shall be deposited in the General Fund.

3 ~~(g) If the owner of a project subject to the start-of-construction~~
4 ~~deadline provided by paragraph (4) of subdivision (a) fails to~~
5 ~~commence construction, without good cause, within 12 months~~
6 ~~after the project has been certified by the commission and has not~~
7 ~~received an extension pursuant to subdivision (f), the commission~~
8 ~~shall provide immediate notice to the California Consumer Power~~
9 ~~and Conservation Financing Authority. The authority shall evaluate~~
10 ~~whether to pursue the project independently or in conjunction with~~
11 ~~any other public or private entity, including the original certificate~~
12 ~~holder. If the authority demonstrates to the commission that it is~~
13 ~~willing and able to construct the project either independently or~~
14 ~~in conjunction with any other public or private entity, including~~
15 ~~the original certificate holder, the commission may revoke the~~
16 ~~original certification and issue a new certification for the project~~
17 ~~to the authority, unless the authority's statutory authorization to~~
18 ~~finance or approve new programs, enterprises, or projects has~~
19 ~~expired. If the authority declines to pursue the project, the permit~~
20 ~~shall remain with the current project owner until it expires pursuant~~
21 ~~to the regulations adopted by the commission.~~

22 ~~(h) If the commission issues a new certification for a project~~
23 ~~subject to the start-of-construction deadline provided by paragraph~~
24 ~~(4) of subdivision (a) to the authority, the commission shall adopt~~
25 ~~new milestones for the project that allow the authority up to 24~~
26 ~~months to start construction of the project or to start to meet the~~
27 ~~applicable deadlines or milestones. If the authority fails to begin~~
28 ~~construction in conformity with the deadlines or milestones adopted~~
29 ~~by the commission, without good cause, the certification may be~~
30 ~~revoked.~~

31 ~~(i) (1) If the commission issues a new certification for a project~~
32 ~~subject to the start-of-construction deadline provided by paragraph~~
33 ~~(4) of subdivision (a) to the authority and the authority pursues~~
34 ~~the project without participation of the original certificate holder,~~
35 ~~the authority shall offer to reimburse the original certificate holder~~
36 ~~for the actual costs the original certificate holder incurred in~~
37 ~~permitting the project and in procuring assets associated with the~~
38 ~~license, including, but not limited to, major equipment and the~~
39 ~~emission offsets. In order to receive reimbursement, the original~~
40 ~~certificate holder shall provide to the commission documentation~~

1 of the actual costs incurred in permitting the project. The
2 commission shall validate those costs. The certificate holder may
3 refuse to accept the offer of reimbursement for any asset associated
4 with the license and retain the asset. To the extent the certificate
5 holder chooses to accept the offer for an asset, it shall provide the
6 authority with the asset.

7 (2) If the authority reimburses the original certificate holder for
8 the costs described in paragraph (1), the original certificate holder
9 shall provide the authority with all of the assets for which the
10 original certificate holder received reimbursement.

11 (j)

12 (g) This section does not prevent a certificate holder from selling
13 its license to construct and operate a project prior to its revocation
14 by the commission. In the event of a sale to an entity that is not
15 an affiliate of the certificate holder, the commission shall adopt
16 new deadlines or milestones for the project that allow the new
17 certificate holder up to 12 months to start construction of the
18 project or to start to meet the applicable deadlines or milestones.

19 (k)

20 (h) Paragraph (4) of subdivision (a) and subdivisions (c) to (j)
21 (g), inclusive, do not apply to licenses issued for the modernization,
22 repowering, replacement, or refurbishment of existing facilities or
23 to a qualifying small power production facility or a qualifying
24 cogeneration facility within the meaning of Sections 201 and 210
25 of Title II of the federal Public Utility Regulatory Policies Act of
26 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the
27 regulations adopted pursuant to those sections by the Federal
28 Energy Regulatory Commission (18 C.F.R. Parts 292.101 to
29 292.602, inclusive), nor shall those provisions apply to any other
30 generation units installed, operated, and maintained at a customer
31 site exclusively to serve that facility's load. For the purposes of
32 this subdivision, "replacement" of an existing facility includes,
33 but is not limited to, a comparable project at a location different
34 than the facility being replaced, provided that the commission
35 certifies that the new project will result in the decommissioning
36 of the existing facility.

37 (l)

38 (i) Paragraph (4) of subdivision (a) and subdivisions (c) to (j)
39 (g), inclusive, do not apply to licenses issued to "local publicly
40 owned electric utilities" as defined in subdivision (d) of Section

1 9604 of the Public Utilities Code whose governing bodies certify
2 to the commission that the project is needed to meet the projected
3 native load of the local publicly owned utility.

4 ~~(m)~~

5 (j) To implement this section, the commission and the California
6 ~~Consumer Power and Conservation Financing Authority~~ may, in
7 ~~consultation with each other~~, adopt emergency regulations in
8 accordance with Chapter 3.5 (commencing with Section 11340)
9 of Part 1 of Division 3 of Title 2 of the Government Code. For
10 purposes of that chapter, including, without limitation, Section
11 11349.6 of the Government Code, the adoption of the regulations
12 shall be considered by the Office of Administrative Law to be
13 necessary for the immediate preservation of the public peace, health
14 and safety, or general welfare.

15 *SEC. 5. Section 216 of the Public Utilities Code is amended*
16 *to read:*

17 216. (a) "Public utility" includes every common carrier, toll
18 bridge corporation, pipeline corporation, gas corporation, electrical
19 corporation, telephone corporation, telegraph corporation, water
20 corporation, sewer system corporation, and heat corporation, where
21 the service is performed for, or the commodity is delivered to, the
22 public or any portion thereof.

23 (b) Whenever any common carrier, toll bridge corporation,
24 pipeline corporation, gas corporation, electrical corporation,
25 telephone corporation, telegraph corporation, water corporation,
26 sewer system corporation, or heat corporation performs a service
27 for, or delivers a commodity to, the public or any portion thereof
28 for which any compensation or payment whatsoever is received,
29 that common carrier, toll bridge corporation, pipeline corporation,
30 gas corporation, electrical corporation, telephone corporation,
31 telegraph corporation, water corporation, sewer system corporation,
32 or heat corporation, is a public utility subject to the jurisdiction,
33 control, and regulation of the commission and the provisions of
34 this part.

35 (c) When any person or corporation performs any service for,
36 or delivers any commodity to, any person, private corporation,
37 municipality, or other political subdivision of the state, that in turn
38 either directly or indirectly, mediately or immediately, performs
39 that service for, or delivers that commodity to, the public or any
40 portion thereof, that person or corporation is a public utility subject

1 to the jurisdiction, control, and regulation of the commission and
2 the provisions of this part.

3 (d) Ownership or operation of a facility that employs
4 cogeneration technology or produces power from other than a
5 conventional power source or the ownership or operation of a
6 facility which employs landfill gas technology does not make a
7 corporation or person a public utility within the meaning of this
8 section solely because of the ownership or operation of that facility.

9 (e) Any corporation or person engaged directly or indirectly in
10 developing, producing, transmitting, distributing, delivering, or
11 selling any form of heat derived from geothermal or solar resources
12 or from cogeneration technology to any privately owned or publicly
13 owned public utility, or to the public or any portion thereof, is not
14 a public utility within the meaning of this section solely by reason
15 of engaging in any of those activities.

16 (f) The ownership or operation of a facility that sells compressed
17 natural gas at retail to the public for use only as a motor vehicle
18 fuel, and the selling of compressed natural gas at retail from that
19 facility to the public for use only as a motor vehicle fuel, does not
20 make the corporation or person a public utility within the meaning
21 of this section solely because of that ownership, operation, or sale.

22 (g) Ownership or operation of a facility that has been certified
23 by the Federal Energy Regulatory Commission as an exempt
24 wholesale generator pursuant to Section 32 of the Public Utility
25 Holding Company Act of 1935 (Chapter 2C (commencing with
26 Section 79) of Title 15 of the United States Code) does not make
27 a corporation or person a public utility within the meaning of this
28 section, solely due to the ownership or operation of that facility.

29 (h) The ownership, control, operation, or management of an
30 electric plant used for direct transactions or participation directly
31 or indirectly in direct transactions, as permitted by subdivision (b)
32 of Section 365, ~~sales into the Power Exchange referred to in Section~~
33 ~~365,~~ or the use or sale as permitted under subdivisions (b) to (d),
34 inclusive, of Section 218, shall not make a corporation or person
35 a public utility within the meaning of this section solely because
36 of that ownership, participation, or sale.

37 *SEC. 6. Section 330 of the Public Utilities Code is amended*
38 *to read:*

39 330. In order to provide guidance in carrying out this chapter,
40 the Legislature finds and declares all of the following:

1 (a) It is the intent of the Legislature that a cumulative rate
2 reduction of at least 20 percent be achieved not later than April 1,
3 2002, for residential and small commercial customers, from the
4 rates in effect on June 10, 1996. In determining that the April 1,
5 2002, rate reduction has been met, the commission shall exclude
6 the costs of the competitively procured electricity and the costs
7 associated with the rate reduction bonds, as defined in Section
8 840.

9 (b) The people, businesses, and institutions of California spend
10 nearly twenty-three billion dollars (\$23,000,000,000) annually on
11 electricity, so that reductions in the price of electricity would
12 significantly benefit the economy of the state and its residents.

13 (c) The Public Utilities Commission has opened rulemaking
14 and investigation proceedings with regard to restructuring
15 California's electric power industry and reforming utility
16 regulation.

17 (d) The commission has found, after an extensive public review
18 process, that the interests of ratepayers and the state as a whole
19 will be best served by moving from the regulatory framework
20 existing on January 1, 1997, in which retail electricity service is
21 provided principally by electrical corporations subject to an
22 obligation to provide ultimate consumers in exclusive service
23 territories with reliable electric service at regulated rates, to a
24 framework under which competition would be allowed in the
25 supply of electric power and customers would be allowed to have
26 the right to choose their supplier of electric power.

27 (e) Competition in the electric generation market will encourage
28 innovation, efficiency, and better service from all market
29 participants, and will permit the reduction of costly regulatory
30 oversight.

31 (f) The delivery of electricity over transmission and distribution
32 systems is currently regulated, and will continue to be regulated
33 to ensure system safety, reliability, environmental protection, and
34 fair access for all market participants.

35 (g) Reliable electric service is of utmost importance to the safety,
36 health, and welfare of the state's citizenry and economy. It is the
37 intent of the Legislature that electric industry restructuring should
38 enhance the reliability of the interconnected regional transmission
39 systems, and provide strong coordination and enforceable protocols
40 for all users of the power grid.

1 (h) It is important that sufficient supplies of electric generation
2 will be available to maintain the reliable service to the citizens and
3 businesses of the state.

4 (i) Reliable electric service depends on conscientious inspection
5 and maintenance of transmission and distribution systems. To
6 continue and enhance the reliability of the delivery of electricity,
7 the Independent System Operator and the commission, respectively,
8 should set inspection, maintenance, repair, and replacement
9 standards.

10 (j) It is the intent of the Legislature that California enter into a
11 compact with western region states. That compact should require
12 the publicly and investor-owned utilities located in those states,
13 that sell energy to California retail customers, to adhere to
14 enforceable standards and protocols to protect the reliability of the
15 interconnected regional transmission and distribution systems.

16 (k) In order to achieve meaningful wholesale and retail
17 competition in the electric generation market, it is essential to do
18 all of the following:

19 (1) Separate monopoly utility transmission functions from
20 competitive generation functions, through development of
21 independent, third-party control of transmission access and pricing.

22 (2) Permit all customers to choose from among competing
23 suppliers of electric power.

24 (3) Provide customers and suppliers with open,
25 nondiscriminatory, and comparable access to transmission and
26 distribution services.

27 (l) The commission has properly concluded that:

28 (1) This competition will best be introduced by the creation of
29 an Independent System Operator ~~and an independent Power~~
30 ~~Exchange~~.

31 (2) Generation of electricity should be open to competition.

32 (3) There is a need to ensure that no participant in these new
33 market institutions has the ability to exercise significant market
34 power so that operation of the new market institutions would be
35 distorted.

36 (4) These new market institutions should commence
37 simultaneously with the phase in of customer choice, and the public
38 will be best served if these institutions and the nonbypassable
39 transition cost recovery mechanism referred to in subdivisions (s)

1 to (w), inclusive, are in place simultaneously and no later than
2 January 1, 1998.

3 (m) It is the intention of the Legislature that California's publicly
4 owned electric utilities and investor-owned electric utilities should
5 commit control of their transmission facilities to the Independent
6 System Operator. These utilities should jointly advocate to the
7 Federal Energy Regulatory Commission a pricing methodology
8 for the Independent System Operator that results in an equitable
9 return on capital investment in transmission facilities for all
10 Independent System Operator participants.

11 (n) Opportunities to acquire electric power in the competitive
12 market must be available to California consumers as soon as
13 practicable, but no later than January 1, 1998, so that all customers
14 can share in the benefits of competition.

15 (o) Under the existing regulatory framework, California's
16 electrical corporations were granted franchise rights to provide
17 electricity to consumers in their service territories.

18 (p) Consistent with federal and state policies, California
19 electrical corporations invested in power plants and entered into
20 contractual obligations in order to provide reliable electrical service
21 on a nondiscriminatory basis to all consumers within their service
22 territories who requested service.

23 (q) The cost of these investments and contractual obligations
24 are currently being recovered in electricity rates charged by
25 electrical corporations to their consumers.

26 (r) Transmission and distribution of electric power remain
27 essential services imbued with the public interest that are provided
28 over facilities owned and maintained by the state's electrical
29 corporations.

30 (s) It is proper to allow electrical corporations an opportunity
31 to continue to recover, over a reasonable transition period, those
32 costs and categories of costs for generation-related assets and
33 obligations, including costs associated with any subsequent
34 renegotiation or buyout of existing generation-related contracts,
35 that the commission, prior to December 20, 1995, had authorized
36 for collection in rates and that may not be recoverable in market
37 prices in a competitive generation market, and appropriate additions
38 incurred after December 20, 1995, for capital additions to
39 generating facilities existing as of December 20, 1995, that the
40 commission determines are reasonable and should be recovered,

1 provided that the costs are necessary to maintain those facilities
2 through December 31, 2001. In determining the costs to be
3 recovered, it is appropriate to net the negative value of above
4 market assets against the positive value of below market assets.

5 (t) The transition to a competitive generation market should be
6 orderly, protect electric system reliability, provide the investors
7 in these electrical corporations with a fair opportunity to fully
8 recover the costs associated with commission approved
9 generation-related assets and obligations, and be completed as
10 expeditiously as possible.

11 (u) The transition to expanded customer choice, competitive
12 markets, and performance based ratemaking as described in
13 Decision 95-12-063, as modified by Decision 96-01-009, of the
14 Public Utilities Commission, can produce hardships for employees
15 who have dedicated their working lives to utility employment. It
16 is preferable that any necessary reductions in the utility workforce
17 directly caused by electrical restructuring, be accomplished through
18 offers of voluntary severance, retraining, early retirement,
19 outplacement, and related benefits. Whether workforce reductions
20 are voluntary or involuntary, reasonable costs associated with these
21 sorts of benefits should be included in the competition transition
22 charge.

23 (v) Charges associated with the transition should be collected
24 over a specific period of time on a nonbypassable basis and in a
25 manner that does not result in an increase in rates to customers of
26 electrical corporations. In order to insulate the policy of
27 nonbypassability against incursions, if exemptions from the
28 competition transition charge are granted, a firewall shall be created
29 that segregates recovery of the cost of exemptions as follows:

30 (1) The cost of the competition transition charge exemptions
31 granted to members of the combined class of residential and small
32 commercial customers shall be recovered only from those
33 customers.

34 (2) The cost of the competition transition charge exemptions
35 granted to members of the combined class of customers other than
36 residential and small commercial customers shall be recovered
37 only from those customers. The commission shall retain existing
38 cost allocation authority provided that the firewall and rate freeze
39 principles are not violated.

(w) It is the intent of the Legislature to require and enable electrical corporations to monetize a portion of the competition transition charge for residential and small commercial consumers so that these customers will receive rate reductions of no less than 10 percent for 1998 continuing through 2002. Electrical corporations shall, by June 1, 1997, or earlier, secure the means to finance the competition transition charge by applying concurrently for financing orders from the Public Utilities Commission and for rate reduction bonds from the California Infrastructure and Economic Development Bank.

(x) California's public utility electrical corporations provide substantial benefits to all Californians, including employment and support of the state's economy. Restructuring the electric services industry pursuant to the act that added this chapter will continue these benefits, and will also offer meaningful and immediate rate reductions for residential and small commercial customers, and facilitate competition in the supply of electric power.

SEC. 7. Section 331 of the Public Utilities Code is amended to read:

331. The definitions set forth in this section shall govern the construction of this chapter.

(a) "Aggregator" means any marketer, broker, public agency, city, county, or special district, that combines the loads of multiple end-use customers in facilitating the sale and purchase of electric energy, transmission, and other services on behalf of these customers.

(b) "Broker" means an entity that arranges the sale and purchase of electric energy, transmission, and other services between buyers and sellers, but does not take title to any of the power sold.

(c) "Direct transaction" means a contract between any one or more electric generators, marketers, or brokers of electric power and one or more retail customers providing for the purchase and sale of electric power or any ancillary services.

(d) "Fire wall" means the line of demarcation separating residential and small commercial customers from all other customers as described in subdivision (e) of Section 367.

(e) "Marketer" means any entity that buys electric energy, transmission, and other services from traditional utilities and other suppliers, and then resells those services at wholesale or to an end-use customer.

(f) “Microcogeneration facility” means a cogeneration facility of less than one megawatt.

(g) “~~Restructuring-trusts~~ trust” means the ~~two~~ tax-exempt public benefit ~~trusts~~ trust established by Decision 96-08-038 of the Public Utilities Commission to provide for *the* design and development of the hardware and software systems for ~~the Power Exchange and the Independent System Operator, respectively,~~ and that may undertake other activities, as needed, as ordered by the commission.

(h) “Small commercial customer” means a customer that has a maximum peak demand of less than 20 kilowatts.

SEC. 8. Article 2 (commencing with Section 334) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

SEC. 9. Section 345.6 is added to the Public Utilities Code, to read:

345.6. (a) The Independent System Operator governing board shall be composed of a five-member independent governing board of directors appointed by the Governor and subject to confirmation by the Senate. Any reference in this chapter or in any other provision of law to the Independent System Operator governing board means the independent governing board appointed under this subdivision.

(b) A member of the independent governing board appointed under subdivision (a) may not be affiliated with any actual or potential participant in any market administered by the Independent System Operator.

(c) (1) All appointments shall be for three-year terms.

(2) There is no limit on the number of terms that may be served by any member.

(d) The Independent System Operator shall revise the articles of incorporation and bylaws, and make filings with the Federal Energy Regulatory Commission in accordance with Section 345.7.

(e) For the purposes of the initial appointments to the Independent System Operator governing board, as provided in subdivision (a), the Governor shall appoint one member to a one-year term, two members to a two-year term, and two members to a three-year term.

SEC. 10. Section 345.7 is added to the Public Utilities Code, to read:

1 345.7. (a) *The Independent System Operator bylaws shall*
2 *contain provisions that identify the following matters as within*
3 *state jurisdiction:*

4 (1) *Selections by California of governing board members, as*
5 *described in Section 345.6.*

6 (2) *Matters pertaining to retail electric service or retail sales*
7 *of electric energy.*

8 (3) *Ensuring that the purposes and functions of the Independent*
9 *System Operator are consistent with the purposes and functions*
10 *of California nonprofit public benefit corporations, including*
11 *duties of care and conflict of interest standards for directors of*
12 *the corporations.*

13 (4) *State functions assigned to the Independent System Operator*
14 *under state law.*

15 (5) *Open meeting standards and meeting notice requirements.*

16 (6) *Appointment of advisors representing state interests.*

17 (7) *Public access to corporate records.*

18 (8) *The amendment of bylaws relevant to these matters.*

19 *The bylaws shall also contain provisions which state that*
20 *California's bylaws approval function with respect to the matters*
21 *specified in subdivision (a) shall not preclude the Federal Energy*
22 *Regulatory Commission from taking any action necessary to*
23 *address undue discrimination or other violations of the Federal*
24 *Power Act (16 U.S.C. Sec. 791a et seq.) or to exercise any other*
25 *commission responsibility under the Federal Power Act. In taking*
26 *any action, the Federal Energy Regulatory Commission shall give*
27 *due respect to California's jurisdictional interests in the functions*
28 *of the Independent System Operator and to attempt to*
29 *accommodate state interests to the extent those interests are not*
30 *inconsistent with the Federal Energy Regulatory Commission's*
31 *statutory responsibilities. The bylaws shall state that any future*
32 *agreement regarding the apportionment of the Independent System*
33 *Operator board appointment function among participating states*
34 *associated with the expansion of the Independent System Operator*
35 *into a multistate entity shall be filed with the Federal Energy*
36 *Regulatory Commission pursuant to Section 205 of the Federal*
37 *Power Act (16 U.S.C. Sec. 824d).*

38 (b) *Any necessary bylaw changes to implement the provisions*
39 *of Section 345.6, or subdivision (a) of this section, or changes*
40 *required pursuant to an agreement as contemplated by subdivision*

1 (a) of this section with a participating state for a regional
2 organization, shall be effective upon approval of the respective
3 governing boards and acceptance for filing by the Federal Energy
4 Regulatory Commission.

5 SEC. 11. Article 4 (commencing with Section 355) of Chapter
6 2.3 of Part 1 of Division 1 of the Public Utilities Code is repealed.

7 SEC. 12. Section 359 of the Public Utilities Code is amended
8 to read:

9 359. (a) It is the intent of the Legislature to provide for the
10 evolution of the Independent System Operator ~~and the Power~~
11 ~~Exchange~~ into a regional ~~organizations~~ organization to promote
12 the development of regional electricity transmission markets in
13 the western states and to improve the access of consumers served
14 by the Independent System Operator ~~and the Power Exchange~~ to
15 those markets.

16 (b) The preferred means by which the voluntary evolution
17 described in subdivision (a) should occur is through the adoption
18 of a regional compact or other comparable agreement among
19 cooperating party states, the retail customers of which states would
20 reside within the geographic territories served by the Independent
21 System Operator ~~and the Power Exchange~~.

22 (c) The agreement described in subdivision (b) should provide
23 for all of the following:

24 (1) An equitable process for the appointment or confirmation
25 by party states of members of the governing boards of the
26 Independent System Operator ~~and the Power Exchange~~.

27 (2) A respecification of the size, structure, representation,
28 eligible membership, nominating procedures, and member terms
29 of service of the governing boards of the Independent System
30 Operator ~~and the Power Exchange~~.

31 (3) Mechanisms by which each party state, jointly or separately,
32 can oversee effectively the actions of the Independent System
33 Operator ~~and the Power Exchange~~ as those actions relate to the
34 assurance of electricity system reliability within the party state
35 and to matters that affect electricity sales to the retail customers
36 of the party state or otherwise affect the general welfare of the
37 electricity consumers and the general public of the party state.

38 (4) The adherence by publicly owned and investor-owned
39 utilities located in party states to enforceable standards and

1 protocols to protect the reliability of the interconnected regional
2 transmission and distribution systems.

3 *SEC. 13. Section 361 of the Public Utilities Code is amended*
4 *to read:*

5 361. The commission shall ensure that any funds secured by
6 the restructuring trusts established for the purposes of developing
7 the Independent System Operator ~~and the Power Exchange~~ shall
8 be placed at the disposal of the Independent System Operator ~~and~~
9 ~~the Power Exchange~~ respectively.

10 *SEC. 14. Section 365 of the Public Utilities Code is amended*
11 *to read:*

12 365. The actions of the commission pursuant to this chapter
13 shall be consistent with the findings and declarations contained in
14 Section 330. In addition, the commission shall do all of the
15 following:

16 (a) Facilitate the efforts of the state's electrical corporations to
17 develop and obtain authorization from the Federal Energy
18 Regulatory Commission for the creation and operation of an
19 Independent System Operator ~~and an independent Power Exchange~~,
20 for the determination of which transmission and distribution
21 facilities are subject to the exclusive jurisdiction of the commission,
22 and for approval, to the extent necessary, of the cost recovery
23 mechanism established as provided in Sections 367 to 376,
24 inclusive. The commission shall also participate fully in all
25 proceedings before the Federal Energy Regulatory Commission
26 in connection with the Independent System Operator ~~and the~~
27 ~~independent Power Exchange~~, and shall encourage the Federal
28 Energy Regulatory Commission to adopt protocols and procedures
29 that strengthen the reliability of the interconnected transmission
30 grid, encourage all publicly owned utilities in California to become
31 full participants, and maximize enforceability of such protocols
32 and procedures by all market participants.

33 (b) (1) Authorize direct transactions between electricity
34 suppliers and end use customers, subject to implementation of the
35 nonbypassable charge referred to in Sections 367 to 376, inclusive.
36 Direct transactions shall commence simultaneously with the start
37 of an Independent System Operator ~~and Power Exchange~~ referred
38 to in subdivision (a). The simultaneous commencement shall occur
39 as soon as practicable, but no later than January 1, 1998. The
40 commission shall develop a phase-in schedule at the conclusion

1 of which all customers shall have the right to engage in direct
2 transactions. Any phase-in of customer eligibility for direct
3 transactions ordered by the commission shall be equitable to all
4 customer classes and accomplished as soon as practicable,
5 consistent with operational and other technological considerations,
6 and shall be completed for all customers by January 1, 2002.

7 (2) Customers shall be eligible for direct access irrespective of
8 any direct access phase-in implemented pursuant to this section if
9 at least one-half of that customer's electrical load is supplied by
10 energy from a renewable resource provider certified pursuant to
11 Section 383, provided however that nothing in this section shall
12 provide for direct access for electric consumers served by municipal
13 utilities unless so authorized by the governing board of that
14 municipal utility.

15 *SEC. 15. Section 367 of the Public Utilities Code is amended*
16 *to read:*

17 367. The commission shall identify and determine those costs
18 and categories of costs for generation-related assets and obligations,
19 consisting of generation facilities, generation-related regulatory
20 assets, nuclear settlements, and power purchase contracts,
21 including, but not limited to, restructurings, renegotiations or
22 terminations thereof approved by the commission, that were being
23 collected in commission-approved rates on December 20, 1995,
24 and that may become uneconomic as a result of a competitive
25 generation market, in that these costs may not be recoverable in
26 market prices in a competitive market, and appropriate costs
27 incurred after December 20, 1995, for capital additions to
28 generating facilities existing as of December 20, 1995, that the
29 commission determines are reasonable and should be recovered,
30 provided that these additions are necessary to maintain the facilities
31 through December 31, 2001. These uneconomic costs shall include
32 transition costs as defined in subdivision (f) of Section 840, and
33 shall be recovered from all customers or in the case of fixed
34 transition amounts, from the customers specified in subdivision
35 (a) of Section 841, on a nonbypassable basis and shall:

36 (a) Be amortized over a reasonable time period, including
37 collection on an accelerated basis, consistent with not increasing
38 rates for any rate schedule, contract, or tariff option above the
39 levels in effect on June 10, 1996; provided that, the recovery shall
40 not extend beyond December 31, 2001, except as follows:

1 (1) Costs associated with employee-related transition costs as
2 set forth in subdivision (b) of Section 375 shall continue until fully
3 collected; provided, however, that the cost collection shall not
4 extend beyond December 31, 2006.

5 (2) Power purchase contract obligations shall continue for the
6 duration of the contract. Costs associated with any buy-out,
7 buy-down, or renegotiation of the contracts shall continue to be
8 collected for the duration of any agreement governing the buy-out,
9 buy-down, or renegotiated contract; provided, however, no power
10 purchase contract shall be extended as a result of the buy-out,
11 buy-down, or renegotiation.

12 (3) Costs associated with contracts approved by the commission
13 to settle issues associated with the Biennial Resource Plan Update
14 may be collected through March 31, 2002; provided that only 80
15 percent of the balance of the costs remaining after December 31,
16 2001, shall be eligible for recovery.

17 (4) Nuclear incremental cost incentive plans for the San Onofre
18 nuclear generating station shall continue for the full term as
19 authorized by the commission in Decision 96-01-011 and Decision
20 96-04-059; provided that the recovery shall not extend beyond
21 December 31, 2003.

22 (5) Costs associated with the exemptions provided in subdivision
23 (a) of Section 374 may be collected through March 31, 2002,
24 provided that only fifty million dollars (\$50,000,000) of the balance
25 of the costs remaining after December 31, 2001, shall be eligible
26 for recovery.

27 (6) Fixed transition amounts, as defined in subdivision (d) of
28 Section 840, may be recovered from the customers specified in
29 subdivision (a) of Section 841 until all rate reduction bonds
30 associated with the fixed transition amounts have been paid in full
31 by the financing entity.

32 (b) Be based on a calculation mechanism that nets the negative
33 value of all above market utility-owned generation-related assets
34 against the positive value of all below market utility-owned
35 generation related assets. For those assets subject to valuation, the
36 valuations used for the calculation of the uneconomic portion of
37 the net book value shall be determined not later than December
38 31, 2001, and shall be based on appraisal, sale, or other divestiture.
39 The commission's determination of the costs eligible for recovery
40 and of the valuation of those assets at the time the assets are

1 exposed to market risk or retired, in a proceeding under Section
2 455.5, 851, or otherwise, shall be final, and notwithstanding Section
3 1708 or any other provision of law, may not be rescinded, altered
4 or amended.

5 (c) Be limited in the case of utility-owned fossil generation to
6 the uneconomic portion of the net book value of the fossil capital
7 investment existing as of January 1, 1998, and appropriate costs
8 incurred after December 20, 1995, for capital additions to
9 generating facilities existing as of December 20, 1995, that the
10 commission determines are reasonable and should be recovered,
11 provided that the additions are necessary to maintain the facilities
12 through December 31, 2001. All “going forward costs” of fossil
13 plant operation, including operation and maintenance,
14 administrative and general, fuel and fuel transportation costs, shall
15 be recovered solely from independent Power Exchange revenues
16 or from contracts with the Independent System Operator, provided
17 that for the purposes of this chapter, the following costs may be
18 recoverable pursuant to this section:

19 (1) Commission-approved operating costs for particular
20 utility-owned fossil powerplants or units, at particular times when
21 reactive power/voltage support is not yet procurable at
22 market-based rates in locations where it is deemed needed for the
23 reactive power/voltage support by the Independent System
24 Operator, provided that the units are otherwise authorized to
25 recover market-based rates and provided further that for an
26 electrical corporation that is also a gas corporation and that serves
27 at least four million customers as of December 20, 1995, the
28 commission shall allow the electrical corporation to retain any
29 earnings from operations of the reactive power/voltage support
30 plants or units and shall not require the utility to apply any portions
31 to offset recovery of transition costs. Cost recovery under the cost
32 recovery mechanism shall end on December 31, 2001.

33 (2) An electrical corporation that, as of December 20, 1995,
34 served at least four million customers, and that was also a gas
35 corporation that served less than four thousand customers, may
36 recover, pursuant to this section, 100 percent of the uneconomic
37 portion of the fixed costs paid under fuel and fuel transportation
38 contracts that were executed prior to December 20, 1995, and were
39 subsequently determined to be reasonable by the commission, or
40 100 percent of the buy-down or buy-out costs associated with the

1 contracts to the extent the costs are determined to be reasonable
2 by the commission.

3 (d) Be adjusted throughout the period through March 31, 2002,
4 to track accrual and recovery of costs provided for in this
5 subdivision. Recovery of costs prior to December 31, 2001, shall
6 include a return as provided for in Decision 95-12-063, as modified
7 by Decision 96-01-009, together with associated taxes.

8 (e) (1) Be allocated among the various classes of customers,
9 rate schedules, and tariff options to ensure that costs are recovered
10 from these classes, rate schedules, contract rates, and tariff options,
11 including self-generation deferral, interruptible, and standby rate
12 options in substantially the same proportion as similar costs are
13 recovered as of June 10, 1996, through the regulated retail rates
14 of the relevant electric utility, provided that there shall be a firewall
15 segregating the recovery of the costs of competition transition
16 charge exemptions such that the costs of competition transition
17 charge exemptions granted to members of the combined class of
18 residential and small commercial customers shall be recovered
19 only from these customers, and the costs of competition transition
20 charge exemptions granted to members of the combined class of
21 customers, other than residential and small commercial customers,
22 shall be recovered only from these customers.

23 (2) Individual customers shall not experience rate increases as
24 a result of the allocation of transition costs. ~~However, customers~~
25 ~~who elect to purchase energy from suppliers other than the Power~~
26 ~~Exchange through a direct transaction, may incur increases in the~~
27 ~~total price they pay for electricity to the extent the price for the~~
28 ~~energy exceeds the Power Exchange price.~~

29 (3) The commission shall retain existing cost allocation
30 authority, provided the firewall and rate freeze principles are not
31 violated.

32 *SEC. 16. Section 367.7 of the Public Utilities Code is repealed.*

33 ~~367.7. (a) It is the intent of the Legislature in enacting this~~
34 ~~section to ensure that individual customers do not experience rate~~
35 ~~increases as a result of the allocation of transition costs, in~~
36 ~~accordance with paragraph (2) of subdivision (c) of Section 367.~~

37 ~~(b) The commission shall implement a methodology whereby~~
38 ~~the Power Exchange energy credit for a customer with a meter~~
39 ~~installed on or after June 30, 2000, that is capable of recording~~
40 ~~hourly data is calculated based on the actual hourly data for that~~

1 customer. The Power Exchange energy credit for a customer with
2 a meter installed before June 30, 2000, that is capable of recording
3 hourly data shall, at the election of the customer, on a one-time
4 basis before June 30, 2000, be calculated based on either (1) the
5 actual hourly data for that customer or (2) the average load profile
6 for that customer class. If the customer fails to make an election,
7 that customer's Power Exchange energy credit shall continue to
8 be based on the average load profile for that customer class.

9 (e) ~~Additional incremental billing costs incurred as a result of~~
10 ~~the methodology implemented by the commission pursuant to~~
11 ~~subdivision (b) may be recoverable through rates for that customer~~
12 ~~class, if the commission finds that the costs are reasonable.~~

13 (d) ~~The methodology implemented by the commission pursuant~~
14 ~~to subdivisions (b) and (c) shall not result in any shifts in cost~~
15 ~~between customer classes and shall be consistent with the firewall~~
16 ~~provision set forth in subdivision (e) of Section 367.~~

17 *SEC. 17. Section 373 of the Public Utilities Code is amended*
18 *to read:*

19 373. (a) Electrical corporations may apply to the commission
20 for an order determining that the costs identified in Sections 367,
21 368, 375, and 376 not be collected from a particular class of
22 customer or category of electricity consumption.

23 (b) Subject to the fire wall specified in subdivision (e) of Section
24 367, the provisions of this section and Sections 372 and 374 shall
25 apply in the event the commission authorizes a nonbypassable
26 charge prior to the implementation of an Independent System
27 Operator and Power Exchange referred to in subdivision (a) of
28 Section 365.

29 *SEC. 18. Section 376 of the Public Utilities Code is amended*
30 *to read:*

31 376. To the extent that the costs of programs to accommodate
32 the implementation of direct access, ~~the Power Exchange~~, and the
33 Independent System Operator, that have been funded by an
34 electrical corporation and have been found by the commission or
35 the Federal Energy Regulatory Commission to be recoverable from
36 the utility's customers, reduce an electrical corporation's
37 opportunity to recover its utility generation-related plant and
38 regulatory assets by the end of the year 2001, the electrical
39 corporation may recover unrecovered utility generation-related
40 plant and regulatory assets after December 31, 2001, in an amount

1 equal to the utility's cost of commission-approved or Federal
2 Energy Regulatory Commission approved restructuring-related
3 implementation programs. An electrical corporation's ability to
4 collect the amounts from retail customers after the year 2001 shall
5 be reduced to the extent the Independent System Operator or the
6 Power Exchange reimburses the electrical corporation for the costs
7 of any of these programs.

8 *SEC. 19. Section 390 of the Public Utilities Code is repealed.*

9 ~~390. (a) Subject to applicable contractual terms, energy prices~~
10 ~~paid to nonutility power generators by a public utility electrical~~
11 ~~corporation based upon the commission's prescribed "short run~~
12 ~~avoided cost energy methodology" shall be determined as set forth~~
13 ~~in subdivisions (b) and (c).~~

14 ~~(b) Until the requirements of subdivision (c) have been satisfied,~~
15 ~~short run avoided cost energy payments paid to nonutility power~~
16 ~~generators by an electrical corporation shall be based on a formula~~
17 ~~that reflects a starting energy price, adjusted monthly to reflect~~
18 ~~changes in a starting gas index price in relation to an average of~~
19 ~~current California natural gas border price indices. The starting~~
20 ~~energy price shall be based on 12-month averages of recent,~~
21 ~~pre-January 1, 1996, short-run avoided energy prices paid by each~~
22 ~~public utility electrical corporation to nonutility power generators.~~
23 ~~The starting gas index price shall be established as an average of~~
24 ~~index gas prices for the same annual periods.~~

25 ~~(c) The short-run avoided cost energy payments paid to~~
26 ~~nonutility power generators by electrical corporations shall be~~
27 ~~based on the clearing price paid by the independent Power~~
28 ~~Exchange if (1) the commission has issued an order determining~~
29 ~~that the independent Power Exchange is functioning properly for~~
30 ~~the purposes of determining the short-run avoided cost energy~~
31 ~~payments to be made to nonutility power generators, and either~~
32 ~~(2) the fossil-fired generation units owned, directly or indirectly,~~
33 ~~by the public utility electrical corporation are authorized to charge~~
34 ~~market-based rates and the "going forward" costs of those units~~
35 ~~are being recovered solely through the clearing prices paid by the~~
36 ~~independent Power Exchange or from contracts with the~~
37 ~~Independent System Operator, whether those contracts are~~
38 ~~market-based or based on operating costs for particular~~
39 ~~utility-owned powerplant units and at particular times when~~
40 ~~reactive power/voltage support is not yet procurable at~~

~~1 market-based rates at locations where it is needed, and are not
2 being recovered directly or indirectly through any other source;
3 or (3) the public utility electrical corporation has divested 90
4 percent of its gas-fired generation facilities that were operated to
5 meet load in 1994 and 1995. However, nonutility power generators
6 subject to this section may, upon appropriate notice to the public
7 utility electrical corporation, exercise a one-time option to elect
8 to thereafter receive energy payments based upon the clearing
9 price from the independent Power Exchange.~~

~~10 (d) If a nonutility power generator is being paid short-run
11 avoided costs energy payments by an electrical corporation by a
12 firm capacity contract, a forecast as available capacity contract,
13 or a forecast as delivered capacity contract on the basis of the
14 clearing price paid by the independent Power Exchange as
15 described in subdivision (c) above, the value of capacity in the
16 clearing price, if any, shall not be paid to the nonutility power
17 generator. The value of capacity in the clearing price, if any, equals
18 the difference between the market clearing customer demand bid
19 at the level of generation dispatched by the independent Power
20 Exchange and the highest supplier bid dispatched.~~

~~21 (e) Short-run avoided energy cost payments made pursuant to
22 this section are in addition to contractually specified capacity
23 payments. Nothing in this section shall be construed to affect,
24 modify or amend the terms and conditions of existing nonutility
25 power generators' contracts with respect to the sale of energy or
26 capacity or otherwise.~~

~~27 (f) Nothing in this section shall be construed to limit the level
28 of transition cost recovery provided to utilities under electric
29 industry restructuring policies established by the commission.~~

~~30 (g) The term "going forward costs" shall include, but not be
31 limited to, all costs associated with fuel transportation and fuel
32 supply, administrative and general, and operation and maintenance;
33 provided that, for purposes of this section, the following shall not
34 be considered "going forward costs": (1) commission-approved
35 capital costs for capital additions to fossil-fueled powerplants,
36 provided that such additions are necessary for the continued
37 operation of the powerplants utilized to meet load and such
38 additions are not undertaken primarily to expand, repower or
39 enhance the efficiency of plant operations; or, (2)
40 commission-approved operating costs for particular utility-owned~~

1 ~~powerplant units and at particular times when reactive~~
2 ~~power/voltage support is not yet procurable at market-based rates~~
3 ~~in locations where it is needed, provided that the recovery shall~~
4 ~~end on December 31, 2001.~~

5 *SEC. 20. Division 1.5 (commencing with Section 3300) of the*
6 *Public Utilities Code is repealed.*

7 ~~SECTION 1. It is the intent of the Legislature to ensure that~~
8 ~~the state meets the targets established by the California Renewables~~
9 ~~Portfolio Standard Program, as set forth in Article 16 (commencing~~
10 ~~with Section 399.11) of Chapter 2.3 of Part 1 of Division 1 of the~~
11 ~~Public Utilities Code, which is intended to complement the~~
12 ~~Renewable Energy Resources Program administered by the State~~
13 ~~Energy Resources Conservation and Development Commission~~
14 ~~and established pursuant to Chapter 8.6 (commencing with Section~~
15 ~~25740) of Division 15 of the Public Resources Code, by enacting~~
16 ~~legislation to establish, within state government, a multiagency~~
17 ~~body under the direction of the Governor for the purpose of~~
18 ~~identifying and resolving permitting issues associated with~~
19 ~~renewable energy generation and transmission line facilities.~~